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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

2013-001825
No. _____

Appeal from Greenville County
Court of Common Pleas
Honorable Letitia H. Verdin, Circuit Judge
Case below 2011-CP-23-08455

Oscar Z. Sorcia,

Appellant,

vs.

Brady K. Mathis; and
Palmetto Surety Cor.,

Respondent.

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JUN 13 2014
SC Court of Appeals

A M E N D E D
I N I T I A L B R I E F O F
A P P E L L A N T

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(1). The Trial Court erred by granting summary judgment in favor of the defendants, when their motion was frivolous, unsupported by any competent evidence and untimely filed. Also the motion was filed solely for the purpose of delay; and where there exist a genuine issue of material fact in dispute, summary judgment was inappropriate.

(a). Trial Court erred and abused its discretion when it denied plaintiff's motion to strike the appearance of defense counsel Paul Landis, who just appeared out of thin air at the eleventh (11th) hour, without a prior order of the Court or consent of parties.....4

(2). The Trial Court erred by denying Plaintiff's Motion for Summary Judgment, fully supported by evidence, affidavits, admissions on file, interrogatories, and other competent evidence.

(a). Trial Court committed error of law and an abuse of discretion where both its findings of facts and reasoning failed to comport with the applicable standard and law governing motions for summary judgment under Rule 56(c) and (e), SCRPC.

(b). Trial Court committed error of law and an abuse of discretion, where Trial Court failed to make a determination as a matter of law, whether the agreement between plaintiff and defendant Mathis, is a Quasi-Contract subject to S.C. Code §38-53-10 et. seq., Which governs all transactions of bondsmen, further that the agreement is/ or is not subject to the equitable laws under Quantum Meruit, to prevent unjust-enrichment.....21

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STATEMENT OF ISSUES ON APPEAL

(1). Whether the Trial Court erred in granting Summary Judgment to the defendants; and where there exist a genuine issue of material fact in dispute?

(a). Whether it was error and abuse of discretion for Trial Court to deny Plaintiff's motion to strike appearance of defense counsel Paul S. Landis?

(2). Whether the Trial Court erred in denying Plaintiff's motion for Summary Judgment; where the motion went unopposed?

(a). Whether the ruling of the Trial Court an error of law and an abuse of discretion, where the reasoning and findings failed to comport with current and applicable law?

(b). Whether the agreement between Surety Bondsman Brady Mathis and client Oscar Sorcia, a Quasi-Contract governed by South Carolina Code of Laws Ann. (1976) as amended §38-53-10 et. seq.; and the Common Law equitable principles of Quantum Meruit?

(3). Whether the Trial Court's Ruling on Plaintiff's Motion to Alter or Amend Judgment, pursuant to Rule 59(e) SCRPC an error of law and an abuse of discretion, where the Court's Ruling failed to comport with the proper standard of review for Rule 59(e) motions?

STATEMENT OF THE CASE

On December 2, 2011, Oscar Z. Sorcia brought this action Pro-Se in forma pauperis, to recover money had and received by a Bonding Company, insured by Pelmetto Surety Corporation, alleging Fraud, Civil Conspiracy and Breach of Contract. The Defendants (Palmetto) and (Mathis) answered the complaint on May, 25, 2012, simply admitting allegations #'s 1-10 and denying allegations #'s 11-20, which this answer was the entire contents of their answer to the complaint. After a period of time for discovery, plaintiff filed a motion for Summary Judgment on February 13, 2013, pursuant to Rule 56 SCRPC. The defendants failed to timely object to the Motion for Summary Judgment (S/J) and on April 8, 2013, Plaintiff filed a proposed order granting summary judgment. The defendants did not respond to either the motion for summary judgment or the proposed order granting summary judgment. On April 18, 2013, the Clerk of Court served notice of a hearing on plaintiff's motion for summary judgment. The hearing was scheduled for May 22, 2013. On May 13, 2013, attorney Paul S. Landis made an unauthorized appearance in this case by filing notice of appearance at the 11th hour. Then on May 15, 2013, Mr. Landis file a late Cross Motion for Summary Judgment, unsupported by any evidence, affidavits, interrogatories or citation of law. However, on May 16, 2013 manage to convince the clerk of court ex parte to delay the hearing on plaintiff's summary judgment motion scheduled for May 22, 2013, less than [8] days before the hearing. On May 20, 2013, two days before

The hearing, the defendants filed an affidavit of defendant (Mathis) and on May 21, 2013, filed an affidavit of Scott Willis. On May 21, 2013, the day before the scheduled hearing, the clerk of court served on plaintiff a new hearing date, with no explanation for the delay. The new hearing date was set for June 19, 2013. On June 4, 2013, Plaintiff filed a motion to strike all pleadings filed by attorney Paul Landis, because of an unauthorized appearance and also opposed the defendant's motion for summary judgment as untimely. On June 19, 2013, a hearing was held, not on plaintiff's motion for summary judgment nor was plaintiff's motion to strike addressed. However, on June 24, 2013, plaintiff received notice of entry of judgment granting summary judgment in favor of the defendants. A timely motion to alter or amend the judgment was filed on July 2, 2013. On July 29, 2013, the order denying the Rule 59(e) motion was filed. A timely notice of appeal was filed August 20, 2013, and this appeal follow.

A R G U M E N T

IN REFERENCE TO ISSUE No. 1:

"(1). The Trial Court erred by granting summary judgment in favor of the defendants, when there motion was frivolous, unsupported by any competent evidence and untimely filed. Also the motion was filed solely for the purpose of delay; and where there exist a genuine issue of material fact in dispute, summary judgment was inappropriate.

(a). Trial Court erred and abused its discretion when it denied plaintiff's motion to strike the appearance of defense counsel Paul Landis, who just appeared out of thin air at the eleventh (11th) hour, without a prior order of the Court or consent of parties."

APPLICABLE STANDARD

A Trial Court's order on Summary Judgment [must] set out facts and accompanying legal analysis sufficient to permit meaningful appellate review; such an order [must] include those facts which the Trial Court finds relevant, determinative of the issues, and [u]ndisputed, and Trial Court should provide clear notice to all parties and the reviewing court as to the [r]ationale applied in granting summary judgment. Rules of Civil Procedure. Rule 56 (c). Bowen v. Lee Process Systems Co., (S.C. App. 2000), 342 S.C. 232, 536 S.E.2d 86. Summary Judgment is improper where the motion presents a question as to the construction of a written contract, and the contract is ambiguous

because the intent of the parties cannot be gathered from the four corners of the instrument. *HK New Plan Exchange Property Owner I, LLC. v. Coker*, (S.C. App. 2007) 375 S.C. 18, 649 S.E.2d 181. At the summary judgment stage of litigation the Court [does not] weigh conflicting evidence with respect to a disputed material fact. Rules Civ. Proc. Rule 56(c). *Shirley's Iron Works Inc. v. City of Union*, (S.C. App. 2010) 378 S.C. 389, 693 S.E.2d 1.

Summary Judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to the conclusion to be drawn from those facts. Rules of Civ. Proc. Rule 56 (c). *Gignilliat v. Gignilliat, Savitz & Bettis, LLP*, (S.C. 2009), 385 S.C. 452, 684 S.E.2d 756. Summary Judgment is not appropriate when further inquiry into the facts is desirable to clarify the application of law. Rules Civ. Proc. Rule 56(c). *Mcknight v. South Carolina Dept. of Corrections*, (S.C. App. 2009) 385 S.C. 380, 684 S.E.2d 566. When Ruling on motion for summary judgment trial judge [must] consider [all] of the documents and evidence within the record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. *Higgins v. Medical University of South Carolina*, (S.C. App. 1997) 326 S.C. 592, 486 S.E.2d 269.

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**LAW / ANALYSIS**  
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Trial Court erred by granting Respondent's motion for summary judgment. The Trial Court's Order reads as follows:

"This matter is before the Court on Plaintiff and defendant's Cross Motions for Summary Judgment and Plaintiff's Motion to Strike and Reject Appearance. Upon review of the pleadings, documents presented, and arguments of Counsel, this Court grants Defendants' Motion for Summary Judgment and denies Plaintiff's motions."

"... In support of their Motion, Defendants presented to this Court an affidavit of Mr. Sorcia (filed in a Federal Lawsuit predicated on these same facts) in which the Plaintiff acknowledges that Defendants fully satisfied all of the financial conditions of the contract. It also appears from the documents submitted that Plaintiff was under an immigration or 'ICE' hold and could not be released even though Defendants posted the agree-upon bond."

"Plaintiff has not presented any evidence to create a genuine issue of material fact. As such, this Court grants defendants' Motion for Summary Judgment."
See (ROA Page 3).

Appellant contends that Trial Court misconstrued appellant's complaint. Where at the beginning of the Order Trial Stated "Plaintiff alleges Fraud, Civil Conspiracy, and Breach of Contract. He claims that the Defendants, whom he contracted with for services of posting bond, failed to satisfy the financial conditions of that bond. He further claims that as a direct result of the alleged failure to satisfy these conditions, he was unjustly incarcerated..." See (ROA Page 3).

Appellant contends that no where in any of appellant's pleading or documents will anyone find statements or claims where appellant states or imply "that as a [d]irect result of the alleged failure to satisfy the financial conditions of the bond, that he was unjustly incarcerated." This is a completely erroneous statement of facts. To the contrary, Appellant does not and never have disputed that respondents posted the required bond certificate.

The Gravamen of Appellant's complaint and cause of action is "Restitution" a Quantum Meruit Action to recover money had and received, to prevent "Unjust-Enrichment" by the Respondents at the expense of appellant. As noted by the Trial Court, "it appears that Plaintiff was under an immigration or 'ICE' hold and could not be release even though Defendant's posted the agreed-upon bond." (See ROA Page 3).

This is a clear indication that the issue is not the posting of the bond, but some other issue. Clearly there was and is no dispute about the bond's financial conditions. Therefore, other conditions or obligations to which plaintiff complains, must be considered in determining whether either party met its burden of establishing or opposing summary judgment, by demonstrating not creating a genuine issue of material fact in dispute.

In so far as claims of "Fraud, Civil Conspiracy and Breach of Contract. These allegations are alleged in the original complaint, which will be discussed. Infra.

The issues which were presented to and [not] addressed by the Trial Court are: (1) Whether Appellant is entitled to a refund as a result of a failed agreement; and (2) Whether, as a matter of law, the respondents are entitled to keep appellant's \$10,000.00. See Plaintiff's Motion for Summary Judgment and Affidavit filed in support thereof. (ROA Page 58, 69 & 70) See also, Plaintiff's Motion to Alter or Amend the Judgment and memorandum of law filed. (ROA Page No. 13, 19 & 20).

The respondents filed a cross motion for summary judgment see (ROA Page No. 42), Ninety (90) days after appellant filed for summary judgment. However, the respondents never opposed appellant's motion for summary judgment. There are no provisions in the Rules of Civil Procedure to allow such late responses to a responsive pleading. The standard is "within 30 days" unless otherwise ordered by the Court. Compare, Rule 12 (A), (B) and (C); and Rule 6 (d), (Not later than ten days before the time specified for the hearing...).

In the respondent's late cross-summary judgment motion, it neither addressed nor controverted the issue of a "Refund" or whether [by law] they are entitled to retain the benefit of Plaintiff's \$10,000.00, with no entitlement to a refund.

The fact that the law governing actions of Bondsman S.C. Code of Laws §38-53-10 et. seq., [does not] provide that, fees paid to bondsman are "Non-Refundable," under [any] circumstances. However, it does allude to the fact that agreements between bondsmen and clients are Quasi-Contracts by operation of law.

Therefore, this alone creates a genuine issue of material in dispute for the trier of fact to decide.

Because there is no Rule of civil procedure, no statutory law governing these types of litigation, Trial Court should have considered the Common Law as controlling; and more specifically "Quasi-Contracts, Quatum Meruit, and Implied by law contracts."

Now, Common Law, requires a court to apply equitable principles "According to natural right or natural justice; marked by due consideration for what is fair [u]nbiased, or impartial."

If the respondent's cross-motion was to controvert appellant's motion for summary judgment; then the respondents was equired to plead "NON-Assumpsit" then claim there were no promises to refund apellant's \$10,000.00. Or, at least show that by some law that the fee is non-refundable. However, the respondents failed to respond to appellant's motion for summary judgment, and when they did decided to respond late, they still did not address or controvert the restitution or refund issue, which

is the crux of the genuine issue of material fact in dispute.

The Trial Court's Order granting the respondent's motion for summary judgment failed to disclose how as a matter of law, the respondents are entitled to relief. Which is the basis for ruling on rule 56 Motions. "As a matter of law".

Summary Judgment is improper where the motion presents a question as to the construction of a written contract, and the contract is [a]mbiguous because the intent of the parties cannot be gathered from the four corners of the instrument. HK New Plan Exchange Property Owner I, LLC. v. Coker, (S.C. App. 2007) 373 S.C. 18, 649 S.E.2d 181.

IN the instant case sub-judice, the agreement between appellant and respondents on the surety bond, does not disclose whether or not appellant is entitled to a refund if he does not get out of jail, despite their efforts of posting the required bond certificate; and unless the respondents can demonstrate by law appellant is not entitled to a refund the issue is open for debate. Summary Judgment is inappropriate, because there exist a genuine issue of material fact in dispute.

At the Summary Judgment stage of litigation the Court [does not] weigh [c]onflicting evidence with respect to a disputed material fact. Shirley's Iron Works, Inc. v. City of Union, (S.C. App. 2010) 338 S.C. 389, 693 S.E.2d 1.

Appellant contends that the respondent's "Bare Bones" motion for summary judgment failed short of the requirements of Rule 56 (c) and (e), and should not have been granted. The respondents submitted [no] law that would entitled them to relief; [no] admssions on file; [no] interrogatories; [no] affidavit that conformed to the requirements of paragraph (e) of Rule 56.

The Respondent's Cross Motion for Summary Judgment reads:

"You will please take notice that, on the tenth day following the service of this motion or at such other time as this matter may be heard, Defendants Brady K. Mathis and Palmetto Surety Corporation will move for an order granting summary judgment in their favor in the above-captioned matter. There are no genuine issue of material fact, and pursuant to rule 56 of the South Carolina Rules of Civil Procedure, Defendants are entitled to summary judgment as a matter of law. Defendants' motion will be supported by citations of law, arguments of counsel affidavits, and such other material as may be properly submitted in support of Defendants' motion." (See ROA Page 42).

The respondents did not submit any other documents or evidence in this matter and the above information was the only thing plead, concerning their motion. Although attorney Paul Landis represented to the Court by filing this motion, claiming "Defendants are entitled to summary judgment as a mater of law", that there was some law to support his clients position, [w]as false information, or more commonly known as "Fraud and misrepresentation to a Court."

This is true because to this day there are no pleadings, expressions of law, citations of law, implication of law, reference to any law, to support their claim of entitlement to releif

as a matter of law. Also, Counsel's representation that the motion "will be [supported] by citations of law, [a]rgument of counsel, [a]ffidavits, was a falsity, with the intent to deceive the Court, as is evident by the Court's erroneous Ruling.

Every since attorney Paul Landis made his sudden appearance at the "11th hour" (one hour before execution of the Death Penalty), in this case, he has manipulated and committed fraud before the Court and engaged in unfair trial tactics. First, Counsel made an unauthorized appearance without having a prior motion or Court Order to appear, which would have allowed appellant the opportunity to properly object. Second, Counsel filed a late dry and empty Cross Motion for Summary Judgment claiming to have evidence, and law to back up the motion to which nothing is [n]oted in the record. (false representation). Third, Counsel submitting papers not being signed by counsel of record in violating of Rule 11 SCRPC. Fourth, Counsel conducting ex parte meetings with the Trial Court and/or Clerk of Court, for purpose of legal maneuvering and dilatory practices of law. i.e. Counsel appeared ex parte, had the Court to postpone appellant's scheduled Summary Judgment hearing the day before the hearing, not allowing opportunity to respond or otherwise object. Fifth, Counsel also submitted the day before the hearing on appellant's hearing, two (2) affidavits of each respondent. The affidavits did not add any new matter than what was submitted by counsel of record in the respondent's answer to request to admit. (in fact it was the exact same information). Compare (ROA Pp. 87-94 & 95-104).

This obviously was to gain confidence in the Clerk to delay the hearing the next day. It's evident counsel Paul Landis influenced the delay of appellant's hearing because, Mr. Landis notified appellant of the hearing delay the day after filing his frivolous cross motion for summary judgment. The Clerk did not change the date until the day before the hearing to allow the respondents' "Savior" Paul Landis to gain an unfair advantage in the 11th hour. Compare (ROA Pp. 109, 110 & 111).

Finally, Counsel Paul Landis, in a last minute ditch, used an affidavit made by appellant in a completely unrelated case to deceive the Court, that it bore relevance to the present case sub judice. This single piece of documentation is the [only] evidence submitted by counsel. which such affidavit would not be competent evidence at trial, had no bearing on the disputed issue of whether appellant should receive a refund or not. (See ROA Pp. 84-86).

because of the frivolousness of all of counsel Paul Landis' filings Trial Court erred in not granting appellant's motion to strike Paul Landis' appearance and all filings not signed by counsel of record, Sidney P. Mitchell, Jr. as a Rule 11 sanction.

The only and sole support of the respondent's cross motion for summary judgment was an affidavit made by appellant in a completely unrelated case. This affidavit is also the [crux] of the Court' Ruling and is the only evidence seemingly to be the basis of Trial Court's Ruling. (See ROA Page 3).

Appellant contends that the respondents and the Trial Court reliance on this document as evidence in this case are greatly misplaced. For one, it is not competent evidence which would be admissible at trial. Second, the affidavit if allowed to be explained, does not indicate that appellant was completely satisfied with the services of the Bonding Company; or that the agreement with the bonding company, was that, there will be no refund of the principle consideration; or the contractual agreement did not provide for a refund clause; or that appellant agreed to [not] be refunded the \$10,000.00 even if he still remained in jail until trial. (See ROA Pp. 84-86).

These necessary elements of the affidavit which the Court and Respondent's rely on [must] be established in order to be considered "Competent" evidence to admitted at trial. The respondents cannot even lay a proper foundation for the use of this affidavit under the Rules of evidence. i.e. Rules 401, 403, 613, 801, 803 or 804. SCRE.

The question to be answered concerning this affidavit is; Whether the affidavit standing alone, sufficient to overcome appellant's summary judgment motion; and Whether this affidavit standing alone sufficient to warrant granting respondent's summary judgment motion?

Under Rule 56 (e) SCRCF, the use of affidavits is limited in scope and use, and is governed by specific application:

(1) Supporting [and] opposing affidavits [shall] be made on personal knowledge; (2) [shall] set forth such [f]acts as would be admissible in evidence; and (3) [shall] show affirmatively that the affiant is competent to testify to the matters stated therein.

In order for such affidavits to be admissible in evidence, under this Rule, it must bare certain indicia of reliability and have other particularized guarantees of trustworthiness. Therefore, under Rule 56 (e), "Sworn or certified copies of all papers or parts thereof [r]eferred to in an affidavit [shall] be attached thereto or served therewith." Id. Second sentence.

Upon the respondents affidavit used (Oscar Z. Sorcia) (ROA P. 84-86), which the Trial Court also relied on in judgment, it is based upon information appellant relied on at the time of a previous litigaton (a Federal Lawsuit).

A close examination of said affidavit, the only relevant part of the affidavit to which also the Court relies upon, is paragraph # 3; where affiant states that "The bonding company satisfied the financial conditions of my bond..." (See ROA Page 84 .)

If this is the basis of the respondents' opposition to appellant's motion for summary judgment; or if it was being

presented as evidence to support [t]heir motion for summary judgment, it lacked or fell short of meeting the requirements of Rule 56 (e). In that, it bare no indication the information in the affidavit is based upon personal knowledge and paragraph # 3, is declaring second and third hand hearsay which are inadmissible in evidence and does not fall within any "Firmly Rooted" hearsay exception, or bare other particularized guarntees of trustworthiness. Appellant was in jail and declaring fact and information received from someone else, with no knowledge of truthfulness.

What should have sent a Big Red Flag up to Trial Court was that Why would a reasonable prudence person knowingly be complaining about something he was satisfied with. Unless he was not fully satisfied completely.

Besides, Paragraph # 3, is merely conjecture, assumption, speculation, and the affidavit was unsupported by sworn or certified copies of [all] papers or parts thereof referred to in the affidavit, which Rule 56 (e) mandates should be attached. see (ROA Page 84).

Since the (affidavit) is the only evidentiary matter submitted by respondents and considered by Trial Court, whether summary Judgment is appropriate based upon this piece of evidence (Affidavit), is one of the controlling issues in this case.

Examining whether respondents met their obligation under Rule 56 (e), it is obvious respondents have not.

Rule 56 (e) (the fourth sentence) reads:

"...When a motion for summary judgment is made and supported as provided in this Rule, and adverse party may not rest upon the mere allegations or denials of his pleading, [but] this response, by [Affidavits] or as otherwise provided in this Rule, [must] set forth specific facts showing that there is a genuine issue for Trial. [If] he does not so respond, summary judgment, if appropriate, 'shall' be entered against him. Id."

Therefore, if the (affidavit) was insufficient for either to support or oppose summary judgment, then an examination of what other evidence "as otherwise provided for in this rule" can be considered as competent evidence to support their summary judgment motion.

Further, Trial Court supporting the respondents' position concluded "Plaintiff has not presented any evidence to create a genuine issue of material fact. As such this Court grants defendants' motion for summary judgment". (See ROA Page 3)

"

Aside from considering that this is a bias statement by Trial Court. Trial Court failed to consider that Appellant filed his Summary Judgment [first] and should have been considered [first]. However, the record will show appellant not relying on his pleading, brought forth: (1) Admissions on file; (2) documentation that the insurance company refunded the premium on the bond in good faith toward appellant; (3) the bond agreement; other competent evidence, also Current Affidavit of Appellant. (See ROA Pp. 87-104 & 113-117)

These evidentiary matters are competent evidence admissible at trial. It both supported Appellant's summary judgment motion and defeated respondent's motion. The genuine issue the Trial Court should have concluded is that upon the issue of [r]estitution or [refund], neither party has demonstrated as a matter of law, that they are entitled to relief. This is not just a genuine issue in dispute, it is the [whole] complaint, and it was not resolved or defeated by respondent's submission of the (affidavit).

The Rules of Civil Procedure, Rules 26-37 SCRCP, provide for discovery, if the respondents wanted an admission of certain facts, Rule 36 Request for Admission, was their provision to obtain facts relevant to [t]his case. The respondents' 11th hour attorney Paul Landis, has subverted this process and reduced it to a form of "Dirty Politics" where you dig up dirt and scandals to bully their opponent. Mr. Landis as an attorney and officer of the court, is subject to the Rules of Professional Conduct, and cannot be allowed to circumvent the wheels of justice or the Rules of civil procedure to gain an unfair advantage over his opponent. Then to top it off commit Fraud and misrepresentation before the Court.

The Court's order of dismissal clearly indicate that it relied on this affidavit as the basis of its judgment, where the order read as follows:

"In support of their motion, Defendants presented to this Court an affidavit of Mr. Sorcia (filed in a Federal Lawsuit predicated on these same facts) in which the Plaintiff acknowledge that Defendant's fully satisfied all of the financial conditions of the contract..." see (ROA Page 3 ~~84~~).

The Statement the Trial Court referred to in the (Affidavit) states the following: paragraph #3

"On July 20, 2009, The bond company satisfied the financial conditions of my bond and the magistrate judge order my release, however, the Greenville County Detention refused to release me..." see (ROA Page 84).

Whether or not the respondents satisfied the financial condition of appellant's bond is not of issue and not the cause of action or why this suit was brought. "Restitution" is and will always be the issue. Whether appellant is entitled to a refund of his \$10,000.00 due to the fact he was never released and did not enjoy the benefit of the bond being posted. Aside from the fact that the respondents/ their agents promised a refund, if they couldn't get him out of jail.

In the original complaint the Third Cause of Action reads as follow: See (ROA Page 9 ~~84~~), paragraphs #19 and #20.

"19. The Defendants failed to fulfill the [terms] of the contract between the plaintiff and the defendants, in that the plaintiff was never released from the custody and control of the state, and/or United States. In order assume his life, employment, and dignity within the community which is the overriding, sole purpose of release on bond."

"20. without [legal] excuse, the Defendants have failed to perform their contractual obligations to the detriment of the plaintiff's [e]conomic and mental well being, by failing to secure the unfettered release of the plaintiff, [as] stated by the defendants." Id.

No where in these claims will you find a complaint that the respondents [failed] to fulfill their [financial] obligation.

If the respondent had any inability to comprehend the exact claims being asserted, then the Rules of Civil Procedure allows for the defense an opportunity to motion for a "More Definite Statement". SCRCR Rule 12(e). However, the respondents failed to timely move for any of the affirmative defenses numerated in Rule 12, SCRCR.

On the other hand appellant made abundantly clear from the beginning that this action was to recover money had and received by the respondents/ their agents. because "terms" of the agreement between appellant and the bonding company was, if they failed to secure his release, appellant would be entitled to a full refund of the principle consideration \$10,000.00. As stated above appellant was never released and never refunded his \$10,000.00. Part of the respondents terms and obligation under the contract was to refund said money if posting the bond certificate did not work to secure his release.

IN REFERENCE TO ISSUE No. 2:

(2). The Trial Court erred by denying Plaintiff's Motion for Summary Judgment, fully supported by evidence, affidavits, admissions on file, interrogatories, and other competent evidence.

(a). Trial Court committed error of law and an abuse of discretion, where Trial Court failed to make a determination as a matter of law, whether the agreement between plaintiff and defendant Mathis, is a Quasi-Contract subject to S.C. Code §38-53-10 et. seq., which governs all transactions of bondsmen, further that the agreement is/ or is not subject to the equitable laws under Quantum Meruit, to prevent unjust-enrichment...

(b). Trial Court committed error of law and an abuse of discretion where both its findings of facts and reasoning failed to comport with the applicable standard and law governing motions for summary judgment under Rule 56(c) and (e) SCRPC.

This case was filed December 2, 2011, and between December 2011 until February 13, 2013, sufficient time was allowed for discovery and pleading any affirmative defense, or any other motion pleading. i.e. Motion for summary Judgment. Appellant filed his motion for summary judgment February 13, 2013, and the respondent failed to or refused to respond to the motion until eight (8) days before the date set for the hearing on appellant's motion.

Now, from December 2011 until May 15, 2013. for 17 months, respondents had an opportunity to plead any defense, file any motion, obtain any discovery. Also, had plenty of time to change attorney. The respondents waited until 11 days before the hearing on appellant's summary judgment motion to change attorney or to bring in addition hired guns to try and save face.

This is true because, the only issues before the Court was appellant's summary judgment motion and proposed order granting summary judgment in favor of appellant. (See ROA Page 109)

In all fairness and the interest of justice, if the respondent failed to defend against this action in the 17 months the case had been pending, they should not have been allowed to at the last minute manipulate the Court, commit fraud, and misrepresent facts, to gain an unfair advantage over appellant by legal maneuvering; simply because appellant is pro-se and is in prison, not to even mention the fact appellant does speak very little English.

On April 29, appellant wrote a letter to Judge Verdin, expressing strong objection to any, dilatory practices by the respondents. The correspondence with Trial Court was served also on counsel of record for the respondents. Appellant asked the Court for protection from unfair trial tactics and legal maneuvering by the respondents. see (ROA Page 105). Obviously this was to no avail.

Rule 56 (c), Reads: "... The judgment sought [s]hall be rendered [forthwith], if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Rule 56 (e) mandates that [if] the non-moving party merely rely on general denials and allegations of his pleadings it is insufficient to overcome a motion. Ibid. "If he does [not] so respond, summary judgment, if appropriate, shall be entered against him."

The following material facts are undisputed by the respondents:
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The respondents does not dispute that they are amenable to this action. Although the respondents named other individuals in their response to appellant's request to admit. (ROA Page 87,89), that they believe are more or less liable. see also (ROA Page 95,96).

Appellant alleged that he paid \$10,000.00 to an agent working for Palmetto Surety Corporation (Palmetto) and Brady K. Mathis (Mathis) to secure his release. The appellant however, was never released. see (ROA Page 7,9).

Appellant alleged and the respondents have not disputed that (Palmetto) refunded the premium on appellant's bond certificate after and as a result of appellant not getting out of jail on said bond certificate. see (ROA Page 117).

The respondents does dispute that they knew about the (ICE) immigration, Customs Enforcement Warrant, prior to accepting any money from appellant's family. Compare the (ICE) hold and warrant with the date money was received. (ROA Pages 114-116).

It is further undisputed that Title §38-53-10 et. seq. governs [all] transactions of Bondsmen and that this provision of law does not preclude refunds of fees paid to a bondsman. Id.

In fact the respondents have not argued against this action being construed as an action in assumpsit to recover money had and received to prevent unjust enrichment; or that the common law principles of equity apply in this action. (See ROA 121-123).

Concerning the original complaint and the causes of action the respondents have not controvert or disputed the claims of fraud, civil conspiracy not the breach of contract, (in so far as entitlement to a refund is concerned). (See ROA Pp.121-123).

Accordingly, upon the above undisputed facts, there remain only two questions that is controlling to be determined, which party is entitled to relief as a matter of law. More specifically upon appellant's motion for summary judgment: (1) Whether as a matter of law appellant is entitled to relief on the undisputed facts: or (2) as a matter of law the respondents have defeated summary judgment by [c]learly demonstrating that there exist a [genuine] issue of material fact still in dispute.

In determining a motion for summary judgment whether any triable issue of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Bovain v. Canal, Ins.*, 687 S.E.2d 422 (S.C. 2009) (citing cases).

Appellant contends that the only piece of evidence to which inferences, that a triable issue could reasonably be drawn from, was the (Affidavit) mentioned above in Issue No. 1. *ibid.* however, as stated above in Issue No. 1, the (Affidavit) is not competent evidence which could be used at trial. This left Trial Court without any evidence to rely on to defeat appellant's summary judgment motion. "On a motion for summary judgment, a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders, all other facts immaterial." *Gauld v. O'Shaugness Realty Co.*, 380 S.C. 548, 671 S.E.2d 79 (S.C. App. 2008).

The only other evidence submitted by respondents was two affidavits of each respondents. These affidavit contained the exact same information as their answers to admissions already on file and submitted by appellant as exhibits in his motion for summary judgment. Besides, all of the evidence submitted by respondents was submitted way to late and was only submitted for the purpose of delay. Neither, did the two affidavits of respondents contain any information to controvert the issue of "Restitution or Refund". Which is the essential elements that they as the non-moving party was required to prove. i.e. that by law appellant is not entitled to a refund, and therefore, they was not require by law to make restitution. The respondents failed at this task and could not defeat appellant's summary judgment motion.

Trial Court Should have rejected all of the affidavits submitted by respondents as untimely, immaterial and inadmissible as evidence, pursuant to Rule 56 (e). Especially because they were submitted for purpose of delay.

Trial Court did not abuse its discretion in ruling that debtor's affidavit opposing summary judgment would not be considered, where more than two months passed from time that creditor served motion for summary judgment until hearing, debtor did not file affidavit until day of hearing, and debtor failed to present any good cause for failure to timely file affidavit. Rules of Civ. Proc. Rule 56 (c). *West v. Gladney*, 341 S.C.127, 533 S.E.2d 334 (S.C. App. 2000).

with the above mentioned affidavits set to one side the only thing the respondent had on file was the general answers to the complaint. See (ROA Page 10). An adverse party may not rely on the mere allegations in his pleading to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial. *Strickland v Madden*, 323 S.C. 63, 448 S.E.2d 581 (S.C. App. 1994).

Under Rule 56(c) (SCRCP) The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughan v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537, 545 (1991). With respect to an issue upon which the non moving party has the burden of proof,

this initial responsibility may be discharged by pointing out to the trial Court that there is an [a]bsence of evidence to support the non moving party's case. Id. citing (**Celotex Corp. v. Catrett**, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). Once the moving party carries its initial burden, the "Opposing party must, under Rule 56 (e), do more than simply show that there is some metaphysical doubt as to the material facts, but must come forward with [specific] facts showing that there is a genuine issue for trial." Id. (quoting **Matsushita Elec. Indus. Co. v. Zenith Radio Corp.**, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). See also, **George v. Empire Fire & Marine Ins. Co.**, 344 S.C. 582, 544 S.E.2d 500 (2001).

In viewing the evidence in the light most favorable to the respondents this Court will find that, this case is a proper action for recovery under "**Quantum Meruit**" and that the bond agreement signed by and/or on behalf of the parties listed in this action, was a "**Quasi-Contract**" and "**Implied by Law Contract**" subject to an equitable remedy of restitution to prevent unjust enrichment. Further, this Court will find that the law governing actions of bondsmen in South Carolina, §38-53-10 et. seq. (2012), does not prohibit refunds of fees paid to bondsmen, nor that the fees paid bondsman are non-refundable.

"Quantum Meruit" "Quasi-Contracts" and "Implied by Law Contracts" are equivalent terms for an equitable remedy. see **Williams Carpet Contractors, Inc., v. Kelly**, (S.C. 2012)

(2012WL5235420). Implied by Law or Quasi-Contracts are not considered contracts at all, but are akin to restitution which permits recovery of that amount the defendant has benefited at the expense of the plaintiff in order to preclude unjust enrichment. **JASDIP., Properties, S.C., LLC. v. Estate of Richardson**, (2011 S.C. App.) (2011 WL3803564).

The element to recover for unjust-enrichment based on Quantum Meruit, Quasi-Contract, or Implied by law Contract, which are equivalent terms for equitable relief, are: (1) a benefit conferred by the plaintiff upon the defendant; (2) realization of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value. see **Rigions Bank v. Wingard Properties, Inc.**, 715 S.E.2d 348 (S.C. App. 2011).

The elements for obtaining equitable relief are clearly present in the instant case sub judice. (1) Appellant conferred \$10,000.00 on defendants/ their agents. This \$10,000.00 was not a gift, but a fee paid under specific conditions to be met; (2) the respondents realized the benefit of the \$10,000.00 by issuing the required bond certificate only upon receipt of the 10,000.00, then the respondents posted the bond certificate with the clerk of court for Greenville County and Mathis signed a bond agreement/ acknowledgment of the conditions set by the Court of General Sessions; (3) finally, the respondent after realizing appellant didn't get out of jail on their bond, never

looked back, never inquired whether appellant got out in the five months prior to his trial. Because they knew appellant was not going to be released. On this note, it is presumed that the bonding company intended to deceive appellant to obtain is \$10,000.00.

It is also presumed that no reasonable prudent person would have paid \$10,000.00 for a bondsman knowing that he would not be released no matter what. The respondents does not dispute that appellant did not know about the (ICE) Immigration Warrant until after paying respondents/ their agents \$10,000.00. The respondents in good conscience cannot deny appellant is entitled to a refund.

A party may be "unjustly enriched" when it has and retains benefits or "Money" which injustice and equity belong to another. **Dema v. Tenet Physicians Services Hilton Head, Inc.**, 678 S.E.2d 430 (S.C. 2009).

Restitution is an equitable remedy sought to prevent unjust enrichment and the plaintiff must show: (1) That he conferred a nongratuituous benefit on the defendnat; (2) That the defendant realized some value from the benefit; and (3) That it would be inequitable for the defendant to retain the benefit without paying the plaintiff its value. **Campbell v. Robinson**, (S.C. App. 2012) (2012 WL1618670).

Appellant contends that Trial Court erred by not granting appellant's motion for summary judgment where appellant easily showed that as a matter of law he is entitled to judgment. Aside from the fact the respondents failed to timely respond or otherwise oppose appellant's summary judgment motion.

Trial Court abused its discretion when it allowed respondents to manipulate the Court's date scheduled for hearing appellant's summary judgment motion, at which point appellant's motion was the only matter before the Court. To allow legal maneuvering in order to gain an unfair advantage; and further, to allow unauthorized appearance and frivolous filing to justify the delay. The respondents failed to come forth with any competent evidence that would be admissible at Trial. Trial Court was in error to accept and consider irrelevant, immaterial affidavits in an unrelated case to rest its decision. Appellant was entitled to summary judgment as a matter of law.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. **Harris v. Anderson County Sheriff's Office**, (S.C. 2009) (2009 WL294756). When plain palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. **Moore v. Barony House Restaurant, LLC.**, (S.C. 2009) (2009 WL596610).

IN REFERENCE TO ISSUE No. 3:  
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"The Trial Court committed an error of law and an abuse of discretion, when it denied plaintiff's motion under Rule 59 (e) SCRPC, and failed to apply the proper applicable standard for such motions, where Trial Court required new evidence or new matter in order to consider said motion."

The Court's ruling on appellant's Rule 59(e) motion to alter or amend the judgment read as follow:

"Plaintiff's motion to alter or amend is denied. Plaintiff has failed to allege any new facts that would allow this Court to change its prior Ruling." (See ROA Page 1).

It was error for Trial Court to deny appellant's motion for "failure to allege any new facts" because alleging new facts would not be a proper reason under the circumstances of appellant's case unless it is newly and after discovered and could not have been discovered prior to trial then the provision of Rule 59(b) would have been proper. Appellant sought to have the Court consider matters overlooked by Trial Court under Rule 59(e).

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LAW / ANALYSIS  
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Argument and theories raised by former foster parents for the first time in a post-trial motion in action to adopt their former foster child were not properly preserved for appellate review. *Michael P. v. Greenville County Dept. of Social Services*, (S.C. App. 2009) 385 S.C. 407, 684 S.E.2d 211.

Mother appealing family Court Ruling on child support and custody modification proceedings failed to preserved for appeal claim for retroactive reimbursement of child support, where mother failed to raise claim at trial and presented the argument for the first time during post-trial motions. Rules Civ. Proc. Rules 59, 60. *Spreeuw v. Barker*, (S.C. App. 2009) 385 S.C. 682 S.E.2d 843.

Appellant rely on the above cases as an analogy that, Trial Court abused its discretion in denying appellant's Rule 59(e) motion, for failure to allege new facts, which was also an error of law, where new matter or new facts are not proper standard of review for 59(e) motions.

Compare -- *Shirley's Iron Works, Inc., v. City of Union*, (S.C. App. 2010) 387 S.C. 389, 693 S.E.2d 1. When an issue or argument has been raised to but not Ruled on by the Trial Court, a party must file a motion to alter or amend the judgment to preserve the issue for appeal. Rules Civ. Proc. Rule 59(e); see also, *Doe v. Doe*, (S.C. App. 1996) 324 S.C. 492, 478 S.E.2d 854. Proper procedure for correcting factual errors in order, is to file motion to alter or amend pursuant to Rules of Civil Procedure. Rule 59(e).

Appellant raised the following issues in his Rule 59(e) motion, to which he believe Trial Court overlooked: See ROA Pp-12-13)

(1). The Court completely misconstrued the plaintiff's complaint and cause of action;

(2). The defendants as the moving party in their Cross-Motion for Summary Judgment filed to demonstrate an [a]bsence of a genuine issue of material fact. Summary Judgment in favor of the defendants was erroneous as a matter of law;

(3). The Court completely overlooked the plaintiff's Motion for Summary Judgment, which was fully supported according to Rule 56(c) (SCRCP), demonstrating entitlement to relief as a matter of law; and

(4). It was error not to consider plaintiff's Motion to strike appearance, the failure to consider prejudiced the outcome of plaintiff's case.

These issues presents that Trial Court overlooked the facts and evidence presented to it, namely: The whole matter arose from appellant's claim for restitution, an action in assumpsit a Quantum Meruit to recover money had and received by the respondents to prevent unjust enrichment. This should have been the focus of the Court. However, the Court being improperly influenced by respondents and their 11th hour attorney, deceived the Court to examine the case under the premise of a contract that was fully satisfied. This alone should have sent up a "Red Flag", to question why would a person complain of something that they are fully satisfied with? If the Court had actually examined appellant's pleadings, affidavits, admission on file and the numerous evidentiary exhibits, including the affidavits of respondents. Trial Court would have concluded properly that "Restitution and or Refund" were the proper issues.

For the same reasons stated in this instant appeal, *ibid*, the remaining Rule 59(e) motion issues need not be re-addressed here as they are fully addressed above in appeal issues 1 and 2.

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I N C O N C L U S I O N

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It was error for Trial Court to grant Summary Judgment in favor of respondents, where their 11th hour attorney made an unauthorized appearance, filed frivolous filings, committed fraud and misrepresented facts to Trial Court solely for the purpose to delay ruling on appellant's motion for summary judgment which was prior to his authorized appearance the [only] motion or matter before Trial Court. The respondent's had failed to respond or otherwise oppose appellant's motion for summary judgment, then resorted to unfair trial tactics and legal maneuvering. Appellant's motion for summary judgment was based upon evidence that he was entitled to a refund as a matter of law according to the Common Law Assumpsit, an action of Quantum Meruit to recover money had and received, to prevent unjust enrichment. This theory of law was fully supported, timely asserted and properly presented for review. The genuine issue in dispute was not answered or resolved, because Trial Court's Order does not indicate that the issue of whether appellant is entitled a refund as a matter of law? or Whether respondents are entitled to keep appellant's \$10,000.00 as a matter of law?

For the foregoing reasons appellant respectfully request this honorable Court to reverse the Trial Court's decision granting respondents summary judgment and the denial of the





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Mr. Oscar Z. Sorcia, 338247  
A.C.I. F1-A47  
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Fairfax, S.C. 29827

April 25, 2014.

RECEIVED

JUN 15 2014

RE: Oscar Sorcia v. Brady Mathis, et al, 2013-001825

SC Court of Appeals

Dear Mrs. Kitchings,

Please find enclosed an original and one copy of Appellant's "Amended" Initial Brief and Designation of Matters to be included in the Record of Appeal, along with proof of service on Attorney for Respondents.

Mrs, Kitchings, I am submitting this Amended Brief in response to an order by this Court dated April 9, 2014, ordering me to notify this court upon receipt of the transcript and to file an amended brief making references to the Record. I believe I have done what is required of me, and if for reason it is not what the court ordered, please let me know exactly what the court want me to do.

Also, due to the fact that I am in prison and do not have access to the proper equipment to bind or produce sufficient copies, and to meet other necessary requirements as to form; I respectfully request that you excuse any deficiencies.

If it will please the Court, perhaps counsel can be appointed to assist me with the binding of my briefs and record on appeal, also with color coding the final brief as well. I would be most appreciated.

Your cooperation and assistance will be greatly appreciated I thank you in advance and will await your response to the filing at your earliest convenient time.

Respectfully Requested

S/ 

Mr. Oscar Z. Sorcia, 338247

Cc: file  
Enclosures